



[4910-13]

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

[Docket No. FAA-2011-1442]

### **Order Limiting Scheduled Operations at Newark Liberty International Airport**

**AGENCY:** Federal Aviation Administration (FAA), DOT

**ACTION:** Notice of FAA Decision on Request for Waiver of the Slot Usage Requirement.

**SUMMARY:** This action grants with conditions a request by Airlines for America (A4A) for a waiver of the slot usage requirement for operating authorizations (slots) at Newark Liberty International Airport (EWR) due to construction at the airport during the summer 2012 and winter 2012-13 scheduling seasons.

**DATES:** Effective upon publication. The deadlines for temporary slot returns under this waiver are March 16, 2012, for summer 2012 slots and August 15, 2012, for winter 2012-13 slots.

**FOR FURTHER INFORMATION CONTACT:** Robert Hawks, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue S.W., Washington, DC 20591; telephone: (202) 267-7143; e-mail: [rob.hawks@faa.gov](mailto:rob.hawks@faa.gov).

### **SUPPLEMENTARY INFORMATION:**

#### **Background**

By letter dated December 6, 2011, A4A requested the FAA grant a limited waiver of the slot usage requirement for EWR during the 2012 runway 4R-22L reconstruction

project. In support of its request, A4A referenced a waiver granted by the FAA in 2010 due to a runway construction project at John F. Kennedy International Airport.<sup>1</sup>

The Port Authority of New York and New Jersey (Port Authority) will resurface EWR runway 4R-22L. In addition, the Port Authority will undertake preparatory work for new taxiways and install new runway lighting and electrical infrastructure. This major project is scheduled for between April 15 and December 15, 2012. The construction schedule, which may be adjusted because of weather conditions, is:

- Nightly closure (0030 through 0630) of runway 4R-22L from April 15 through December 15.
- Extended weekend closure of runway 4R-22L from April 15 through November 15.<sup>2</sup> Closure will occur from 0030 on Saturday through 1100 on Sunday.
- Closure of runway 4R-22L from September 8 through September 17.
- Closure of the intersection of runway 4R-22L and runway 11-29 from May 4 through May 9. This closure will result in shortening the available lengths of both runways.

A4A contends the closures will significantly affect EWR's throughput because runway 4R-22L is the airport's principal arrival runway. During the construction closures, both arrivals and departures must share runway 4L-22R. Construction closures that shorten the length of cross-wind runway 11-29 may reduce the number of arrivals and departures that can use that runway.

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<sup>1</sup> 74 FR 52838 (Oct. 14, 2009).

<sup>2</sup> Construction work is not scheduled for the weekends of March 12-13, June 30-July 1, and July 7-8.

EWR is one of the busiest airports in the nation and currently experiences significant delay. A4A argues construction closures, and the resulting decreased throughput, likely will increase airport delays. The FAA, the Port Authority, and airlines have discussed mitigations of construction-related delays, and the construction schedule, which limits the closures, reflects those discussions.

### **FAA Analysis**

Under the Order limiting scheduled operations at EWR, slots must be used at least 80 percent of the time. This rule is expected to accommodate routine weather and other cancellations under all but the most unusual circumstances. Slots not meeting the minimum usage rules will not receive historic precedence for the following corresponding scheduling season.<sup>3</sup> The FAA may grant a waiver from the slot usage requirement in highly unusual and unpredictable conditions that are beyond a carrier's control and affect a carrier's operations for a period of five or more consecutive days. However, the FAA does not routinely grant general waivers to the usage requirement except under the most unusual circumstances.

The FAA has determined that the projected operational, congestion, and delay impacts of the 2012 EWR runway construction meet the requirements for a temporary waiver of the slot usage requirement. Considering the throughput impacts during construction, reducing operations to minimize congestion and delays is in the public interest. Carriers that temporarily reduce flights and elect to temporarily return slots to the FAA rather than transfer them for another carrier's use should not be penalized by permanently losing the authority to operate.

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<sup>3</sup> 76 FR 18618 (Apr. 4, 2011).

## **FAA Decision**

In consideration of the foregoing, A4A's request for a waiver is GRANTED WITH CONDITIONS. This waiver applies only to EWR slots for the following days: (1) Saturdays and Sundays from April 15 through November 15; (2) May 4 through May 9, and (3) September 8 through September 17. To obtain a waiver for a specific slot held, a carrier must temporarily return to the FAA slots that it will not operate during the waiver period. The carrier will retain historical precedence for these temporarily returned slots. These temporary slot returns permit the FAA to plan for days on which construction closures and resulting operational impacts occur. If the closure dates change due to weather, the FAA will apply the waiver, including retroactively, if a carrier notifies the FAA that the temporarily returned slots will not be operated on any new closure dates. For summer 2012 slots, the temporary slot return deadline is Friday, March 16, 2012. For winter 2012-13 slots, the temporary slot return deadline is Wednesday, August 15, 2012. Temporary slot returns should be submitted to the Slot Administration Office by e-mail at [7-awa-slotadmin@faa.gov](mailto:7-awa-slotadmin@faa.gov) or by facsimile at (202) 267-7277. These return notifications should indicate they are subject to this waiver.

Issued in Washington, DC, on January 4, 2012.

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